IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING
[Chapter VIII, Rule 32(2) (b)]
Description of case

Civil Writ Petition No. 117 of 2003 (S/S) **Decided on: Nov. 14, 2006**

A.F.R. (Approved for Reporting)
Not approved for Reporting

Date. 14.11.2006

(Initial of Judge)

Not: Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 117 of 2003 (S/S)

Mahidhar Prasad Mundepe
Ex-NB. Subedar, J.C. No. 62329,
R/o Near New Yamuna Colony
Dak Pathar, Dehradun.

……. Petitioner

Versus

1. Union of India
   Through Secretary
   Ministry of Defence, New Delhi.
2. Controller of Defence Accounts (P),
   Allahabad, U.P.
3. Commandant,
   Re-survey Medical Board,
   Re-survey Medical Board,
   Military Hospital, Dehradun (U.A.)

……. Respondents

Mr. LD. Dobhal and Mr. Narayan Datt, learned counsel for the petitioner.
Mrs. Bina Pandey, learned Standing Counsel for Union of India.

Hon'ble Prafulla C. Pant, J.

By means of this petition, moved under Article 226 of the Constitution of India, the petitioner has sought writ in the nature of certiorari quashing decision of respondent No. 2 Controller of Defence Accounts (Pension), Allahabad, denying the disability pension to the petitioner w.e.f. 24.08.1988 A Mandamus has also been sought for payment of arrears of pension with interest.

2) Heard learned counsel for the parties and perused the record.

3) Brief facts of the case, as narrated in the writ petition, are that the petitioner joined Indian Army on 01.07.1950 with the Garhwal Rifles. During the course of his service he contracted the invalidating disease known as 'Ventricular extra Systoles multiple' in 1971 and was placed in low medical category 'BEE permanent'. It is alleged in the petition that said disease was result of stress and strain of service conditions and was directly attributable to military service. The petitioner was discharged from the military Hospital Jabalpur with 20% disability and was retired with disability pension w.e.f. 02.08.1974, vide PPO No. S/16030/74. According to the petition, the petitioner received the disability pension for more than 24 years, till 21.01.1999, after the discharge from service and every time when he was examined his disability was found 20% after his retirement. Details of the same are mentioned as under:

	Period	**Disability**	**Letter Nos.**
(a)	02.08.74 to 22.05.76	20%	Vide PPO No. D/PA/695/74
(b)	23.02.76 to 04.01.78	20%	Vide PPO No. D/RA/9134/76
(c)	05.01.78 to 23.10.87	20%	Vide PPO No. D/DRA/6839/78
(d)	24.10.87 to 11.06.97	20%	Vide PPO No. D/DRA/ 13737/87
(e)	12.06.97 to 21.01.99	20%	Vide PPO No. D/DRA/6045/97

The petitioner alleges that of a sudden he was again called to face Re-survey Medical Board at military hospital, Dehradun on 31.05.1998, conducted by respondent No. 3. It is further alleged that the petitioner's disability was again found to the extent of 20% in the year 1998, for next ten years. It is alleged by the petitioner that at the age of 73 years after he received the disability pension for 24 years,

suddenly, the respondent stopped the disability pension of the petitioner on the ground that the disability has gone down by 1 – 5 per cent less, from 20%. The said order dated 04.12.1998 (copy Annexure –3 to the writ petition), by which the disability pension is stopped, is challenge in this petition. Before filing the present writ petition, the petitioner filed an appeal on 29.01.1999, before the authority concerned, but the same was rejected (copy Annexure -5 to the writ petition) against his claim for the disability pension. Hence, this writ petition.

4) The respondents contested the petitioner and a counter affidavit was filed on their behalf, in which it was been admitted that the petitioner did join Indian Army on 1st July, 1950 with Garhwal Rifles and promoted to the rank of Nb. Subedar, in Army Education Corps. It is also admitted that while the petitioner was serving with 95 Mountain Regiment, his low medical category was detected due to the disease 'Ventricular extra Systole Branch Block' and he was placed in medical category CEE and later to medical category BEE (Permanent). It is also admitted that the petitioner got retired with disability pension with 20% disability. It is also admitted that from time to time his disability was found to have been continued to the extent of 20%. However, for the disputed period i.e. with effect from 2nd January 1999, it is stated in the counter affidavit that the disability pension was discontinued as the claim for claim of re-assessed disability pension recommended by Re-survey Medical Board was rejected by P.C.D.A. (Pension), Allahabad, after consultation with the Medical Adviser

(Pension). It is stated in the counter affidavit that the disability due to the disease had gone down by 1 – 5%, from 20% as such, the petitioner was no more entitled to the disability pension.

5) It is admitted to the parties that the petitioner retired from the service of Army with disability pension to the extent of 20% due to the 'Ventricular extra Systoles Multiple' disease. It is also admitted that from the year 1974 till 1998, there was no dispute that he continued said disability as and when examined by the Medical Board. Strangely, after 24 years of retirement, suddenly, at the age of 73 years, the respondents have taken a stand that the disability as gone done of the petitioner by 1 – 5% , from 20% limit, he was suffering. In the case like the present one, where all the facts are admitted, as mentioned above, the responsibility lies on the respondents to show that on what basis, it came on the conclusion that the disability has gone down, less than 20%.

6) Learned Standing Counsel for Union of India drew attention of this Court to the Annexure -7 to the counter affidavit, which contains the amendment in Rules 17 to 27 of the Entitlement Rules, 1982. Learned Standing Counsel, particularly, drew attention of this Court to Clause (b) of Rule 17, in which it is provided that 'the competent Medical Authority may for reasons to be recorded in writing, alter or modify the recommendations of IMB / RMB / RSMB / Lower Medical Authorities. Learned Standing Counsel further contended that the higher authorities were not bound by the recommendation of the Medical Board who had

examined the petitioner. After going through the papers of record, this Court does not find that denial of disability pension under aforesaid Rule justifies action on the part of the respondents. The perusal of Annexure C.A. -4 to the counter affidavit itself shows that on the directions of the respondents, the petitioner submitted himself for the medical examination conducted by the Medical Board, before military hospital, Dehradun by getting himself admitted in the hospital on 24.07.1998. He was examined on 31.07.1998, and a report dated 7the August 1998 was prepared, in which it is specifically mentioned that the 20% disability of 'Multiple Ventricular extra Systoles' continues, and as such, it was so reassessed for next two w.e.f 22.01.1999 to 21.01.2001. Annexure C.A. -5 to the counter affidavit, further shows that all the papers, including the X-ray film, were sent to the Chief Controller of Defence Accounts (Pension), Allahabad for their consideration. No doubt, the respondents had an authority under Clause (b) of Rule 17 of the Entitlement Rules, 1982 to disagree with the recommendation of the Medical Board, but the authorities were required to disclose reasons for disagreeing with the recommendations. The impugned order, which is Annexure -3 to the petition (also Annexure C.A. -6 to the counter affidavit), only discloses that after consultation with Medical Adviser (Pension), it was found that the disease has been reviewed and reassessed and it is now less than 20% (by 1-5%), as such, the petitioner is not entitled to disability pension. On what basis this conclusion has been drawn against the papers on record submitted by the authorities, who examined the petitioner, is not disclosed? As such, the

impugned order suffers from arbitrariness and cannot be upheld. Merely for the reason that Clause (b) of Rule 17 of he Entitlement Rules, 1982, empowers the competent Medical Authority to modify the recommendation cannot justify denial of disability pension in above circumstances, as no reasons has been assigned for such modification or disagreement.

7) For the reasons as discussed above, the impugned order whereby the petitioner has been deprived of the disability pension at an old age of over 70 years, cannot be sustained in the eyes of law, as the same is not supported by the reasons required to the recorded. Accordingly, the same is liable to be quashed. Therefore, the writ petition is allowed. The impugned order dated 4th December 1998 (Annexure -3 to the writ petition), whereby the disability pension has been denied to the petitioner, is quashed. The petitioner shall be entitled to the disability pension under the rules, and the arrears shall be paid to him, within a period of three months. However, the claim of interest is refused. The petition stands disposed of, accordingly. No order as to costs. (All pending applications in this Petition also stand disposed of).

(Prafulla C. Pant, J.)

Dt.: Novermber 14, 2006
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